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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 638 of 2004

in

SPECIAL CIVIL APPLICATIONNo 975 of 2004

with

CIVIL APPLICATION NO.1399 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGUBHAI RANCHHODJI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 638 of 2004

MR IS SUPEHIA for Appellant

MR KT DAVE, AGP for Respondent No. 1,3

NOTICE SERVED for Respondent No. 1-3

MR HS MUNSHAW for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 11/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant - original petitioner was serving as a Head Master in Dungri Station School of Valsad District. On the basis of the certificate dated 1.8.1961 issued by the Gujarat Secondary School Certificate Examination Board, he was retired from service with effect from 31.1.1998 by an impugned order 2.1.1998 (Annexure-A to the main petition) as in the said certificate his birth date was shown as 16.1.1940.

#. It may be stated that before approaching this Court by way of Special Civil Application No.9754 of 2004 the appellant had earlier approached the Civil Court (SD), Valsad by way of Civil Suit No.13 of 1998 for declaration and injunction against the impugned order of retirement dated 2.1.1998. It seems that the appellant failed to obtain any interim order in his favour on application Exh.5 filed in the suit. He first approached this Court by way of Appeal from Order No.217 of 1998, but it was dismissed as not pressed on 25.8.1998 by the learned Single Judge of this Court with a direction to the learned trial Court to hear and dispose of the said suit as expeditiously as possible and, in any case, not later than 31.3.1999. It seems that, thereafter, a settlement purshis dated 2.1.1999 (Annexure-C) was filed before the trial Court and the suit was disposed of.

#. It is the case of the appellant that after he withdrew the suit from the Civil Court on the basis of the settlement arrived at between him and the respondents, the respondents backed out from their undertaking. Therefore, he continued to make representations, but it had not yielded any result, therefore, at last, he approached this Court in 2004 by way of Special Civil Application No.975 of 2004 and prayed that the impugned order dated 2.1.1998 (Annexure-A) and the subsequent order dated 9.10.2000 (Annexure-J) about pension be quashed and set aside by treating the appellant - petitioner in continuous service

upto 31.5.2002 on the basis of real birth date i.e. 1.1.1944 which was recorded in his service book. However, the said writ petition of the appellant petitioner was summarily dismissed by the learned Single Judge of this Court on 27.1.2004 on the ground that though the impugned order of retirement from service at Annexure-A was passed way back in 2.1.1998, he approached this Court by way of writ petition only in 2004 after a period of more than 6 years. Hence, on the ground of gross delay and laches in approaching this Court, the learned Single Judge refused to exercise his discretionary jurisdiction in favour of the appellant petitioner. This order is challenged in this appeal.

#. Mr.Supehia, learned advocate for the appellant submitted that the learned Single Judge committed an error in dismissing his writ petition only on the ground of gross delay and laches. He submitted that after the impugned order dated 2.1.1998 was passed, he first approached the Civil Court by way of Civil Suit, but after withdrawing the same, he had approached this Court in 2004, because, in between he continued to make representations about redressal of his grievance, but, he fell on deaf ears of the respondents, therefore, at last, he approached this Court by way of the writ petition. This aspect of the case was not considered by the learned Single Judge. He, therefore, submitted that on facts of this case, the learned Singe Judge ought to have exercised his discretionary jurisdiction in favour of the appellant - petitioner, more particularly, when his correct date of birth 1.1.1944 was already shown in his service book at the time of entry in service and his birth date was wrongly changed to 16.1.1940 by the respondent authority on the basis of the S.S.C. certificate.

#. In case of State of Harayana and others Vs. Ajay Walia (Ms), reported in (1997) 6 SCC 255, the Honourable Supreme Court clearly held that repeated representations would not furnish a fresh cause of action to a person to file writ petition and the High court was wholly unjustified to have entertained and allowed the writ petition of a person who approached the Court after several years. Therefore, on the ground of gross delay and laches only, this petition should have been dismissed.

#. Under the circumstances, when the learned Single Judge has refused to exercise his extraordinary writ jurisdiction in favour of the appellant - petitioner, then there is no reason for this Court to take a

different view of the matter on the peculiar facts of this case.

#. In view of the above discussion, this appeal fails and is hereby dismissed. There shall be no order as to costs.

#. Civil Application is dismissed as the main appeal is dismissed.

(B.J.Shethna,J)

(Sharad D.Dave,J)
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